



Federal Communications Commission  
Washington, D.C. 20554

DA 05-2687

October 13, 2005

Bruce A. Henoch, Esq.  
Shulman Rogers Gandal Pordy & Ecker, P.A.  
11921 Rockville Pike  
Rockville, MD 20852

**Re:** Request for Waiver of 47 C.F.R. § 1.2107(c)  
Repeater Network LLC, File No. 0002217644

Dear Mr. Henoch:

This letter responds to your letter of June 15, 2005,<sup>1</sup> which seeks a waiver of Section 1.2107(c) of the Commission's rules<sup>2</sup> to permit the late filing of a long-form application for authorization (FCC Form 601) by Auction No. 59 winning bidder Repeater Network LLC (RN).<sup>3</sup> For the reasons stated below, we grant the requested waiver.

*Background.* Section 1.2107(c) and the *Auction No. 59 Closing PN*<sup>4</sup> required RN to file its long-form application no later than June 9, 2005. However, RN did not file its long-form application until June 27, 2005. Your letter explains that the principal of RN, Mr. Joseph Gottlieb, believed that the form was to be filed concurrently with the final payment. When Mr. Gottlieb prepared to submit his final payment on June 22, he discovered his oversight.<sup>5</sup>

In support of your request, you state that the public interest will be served by the grant of the requested waiver and that the circumstances indicate that failure to grant would be unduly burdensome and would frustrate the purpose of the rules.<sup>6</sup> You add that the fact that RN has timely made all payments demonstrates that RN is a serious bidder and has been acting in good faith in all respects.<sup>7</sup> Finally, you

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<sup>1</sup> Letter from Bruce A. Henoch, counsel to Repeater Network LLC, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau (June 23, 2005) (*Henoch Letter*).

<sup>2</sup> 47 C.F.R. § 1.2107(c).

<sup>3</sup> RN is the winning bidder in Market BEA010 for spectrum block AH. See Multiple Address Systems Spectrum Auction Closes: Winning Bidders Announced, *Public Notice*, DA 05-1392 (WTB rel. May 25, 2005) (*Auction No. 59 Closing PN*).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Henoch Letter* at 1.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* at 1-2.

state that RN intends to put this license to use providing “valuable SCADA [Supervisory Control and Data Acquisition] services to public utilities, uses that will provide significant public benefit.”<sup>8</sup>

*Discussion.* Ordinarily, a winning bidder that fails to file the required long-form application in a timely manner is deemed to have defaulted and is subject to the default payment set forth in Section 1.2104(g).<sup>9</sup> However, the Commission may, for good cause, determine that a late-filed long form application should be accepted.<sup>10</sup> To obtain a waiver of the Commission’s rules, RN must show that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative.<sup>11</sup> An underlying purpose of post-auction application deadlines is to ensure that winning bidders satisfy the Commission’s qualification and eligibility requirements in a timely manner and so avoid “delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction.”<sup>12</sup> As set forth below, RN has presented sufficient facts to show that, considered in their totality, the circumstances in the instant case meet the standard for waiver of the subject rule.

We find that granting a waiver of the long-form application deadline in this case would not disserve or frustrate the underlying purpose of the post-auction filing requirements. As an initial matter, notwithstanding RN’s failure to timely submit its long-form application, we note that Commission records indicate that the company complied with all pre-auction filing requirements in Auction No. 59, including timely submission of its upfront payment, and was found to be a qualified bidder. Further, following the auction, Commission records show that RN timely satisfied both its down payment and final payment obligations. As RN timely met its down payment requirements and submitted its long-form application soon after the filing deadline, we are satisfied that RN’s error will not unduly delay deployment of its service to the public, and thus not undermine or frustrate the purpose of the post-auction licensing process.

We further find that grant of the waiver would serve the public interest. First, dismissal of the long-form application filed by RN would prevent this company from providing SCADA services to public utilities. We also give considerable weight to the applicant’s record of prior compliance with auction-related requirements. Finally, we note that our decision comports with precedent granting relief for minor delinquencies that did not disrupt the auction process or the deployment of service.<sup>13</sup>

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> 47 C.F.R. §§ 1.2104(g), 1.2107(c). *See* Implementation of Section 309(j) of the Communications Act, Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2388 ¶ 199 n.152 (1994) (*Competitive Bidding Second R&O*).

<sup>10</sup> *See* 47 C.F.R. § 1.2107(c); *Auction No. 59 Closing PN* at 6.

<sup>11</sup> *See* 47 C.F.R. § 1.925(b)(3). *See also* 47 C.F.R. § 1.3.

<sup>12</sup> *See Competitive Bidding Second R&O*, 9 FCC Rcd at 2382 ¶ 197.

<sup>13</sup> *See, e.g.,* Silver Palm Communications, Inc., *Order*, 17 FCC Rcd 6606 (WTB, Com. Wir. Div. 2002) (Bureau granted waiver when late filing was due to applicant’s inadvertence and unawareness of deadline, and licenses would provide rural areas with competitive wireless service); City Page & Cellular Services, Inc., *et al., Order*, 17 FCC Rcd 26109 (WTB, Com. Wir. Div. 2002) (Bureau granted waivers to seven applicants, citing, for instance, one applicant’s unawareness of the deadline and another applicant’s misunderstanding regarding the scope of counsel’s undertaking).

Although we grant RN a waiver of the rules that otherwise would require dismissal of its long-form application and associated imposition of a default payment, we strongly caution RN to take steps to ensure timely compliance with all of the Commission's auction procedures in the future. RN was on notice that it was responsible for timely submitting its long-form application.

For the reasons set forth above, we grant RN's waiver request. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Jeffrey S. Cohen, Deputy Chief  
Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau